

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH GERDON,

Claimant,

v.

CON PAULOS, INC.,

Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION,

Surety,

Defendants.

IC 2008-019169

**ORDER DENYING
RECONSIDERATION**

Filed February 1, 2013

Pursuant to Idaho Code § 72-718, Claimant moves for reconsideration of the Commission's October 15, 2012 decision in the above-captioned case. Claimant argues that the Commission's findings on Claimant's disability rating are not supported by substantial and competent evidence. Specifically, Claimant argues that the Commission's findings are based on Exhibit F, page 92, a "check the box medical opinion" that lacks sufficient reliability and should be given no weight. Defendants reply that Claimant's motion amounts to nothing more than a request to reweigh evidence already considered.

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within twenty days from the date of filing the decision, any party may move for reconsideration. Idaho Code § 72-718. A motion for reconsideration must "present to the Commission new reasons factually and legally to support [reconsideration] rather than rehashing evidence previously presented." *Curtis v. M.H. King Co.*, 142 Idaho 383, 128 P.3d 920 (2005). The Commission is not inclined to reweigh evidence and arguments simply because the case was not resolved in the party's favor.

On reconsideration, the Commission will examine the evidence in the case and determine whether the evidence presented supports the legal conclusions in the decision. However, the Commission is not compelled to make findings of fact during reconsideration. *Davidson v. H.H. Keim*, 110 Idaho 758, 718 P.2d 1196 (1986).

Defendants correctly note that Claimant's motion is a reiteration of arguments previously made by Claimant and already considered by the Commission. The Commission finds these arguments unpersuasive. The Referee's recommendation, adopted by the Commission, contains a comprehensive explication of the evidence that the Referee relied upon in coming to her conclusions. It is clear from the context of the recommendation that the Referee considered and relied upon more than one "check the box opinion" in determining Claimant's degree of disability. The Commission, in reviewing the record, found that the Referee's conclusions were supported by substantial and competent evidence. We therefore find no reason to disturb them now. Claimant's motion for reconsideration is DENIED.

IT IS SO ORDERED.

DATED this __1st____ day of February, 2013.

INDUSTRIAL COMMISSION

/s/_____
Thomas P. Baskin, Chairman

/s/_____
R.D. Maynard, Commissioner

/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/_____
Assistant Commission Secretary

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CERTIFICATE OF SERVICE

I hereby certify that on the _1st___ day of February, 2013, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States mail upon each of the following:

DANIEL J LUKER
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eb

/s/_____